

# Endangered Species Act



# ESA and Essential Fish Habitat

- State has numerous Federally-listed species and plants
  - Includes fish, birds, mammals, insects and plants
  - Species lists are available on USFWS and NMFS websites
- FEMA is required to consult with USFWS and NMFS when a funded project affects:
  - Federally-listed species
  - Designated critical habitat
  - Essential Fish Habitat

# ESA “Taking”

- Unlawful to “take” any endangered species
- Applies to everyone
- Penalties include project injunctions and individual prosecution
- Two categories of species given protection:
  - Endangered
  - Threatened

# ESA Requirements

- Federal Agencies Must:
  - Consider effects of actions on threatened or endangered species
  - Take Proactive conservation
  - Avoid harm to listed species or listed species habitat
- ESA Section 7:

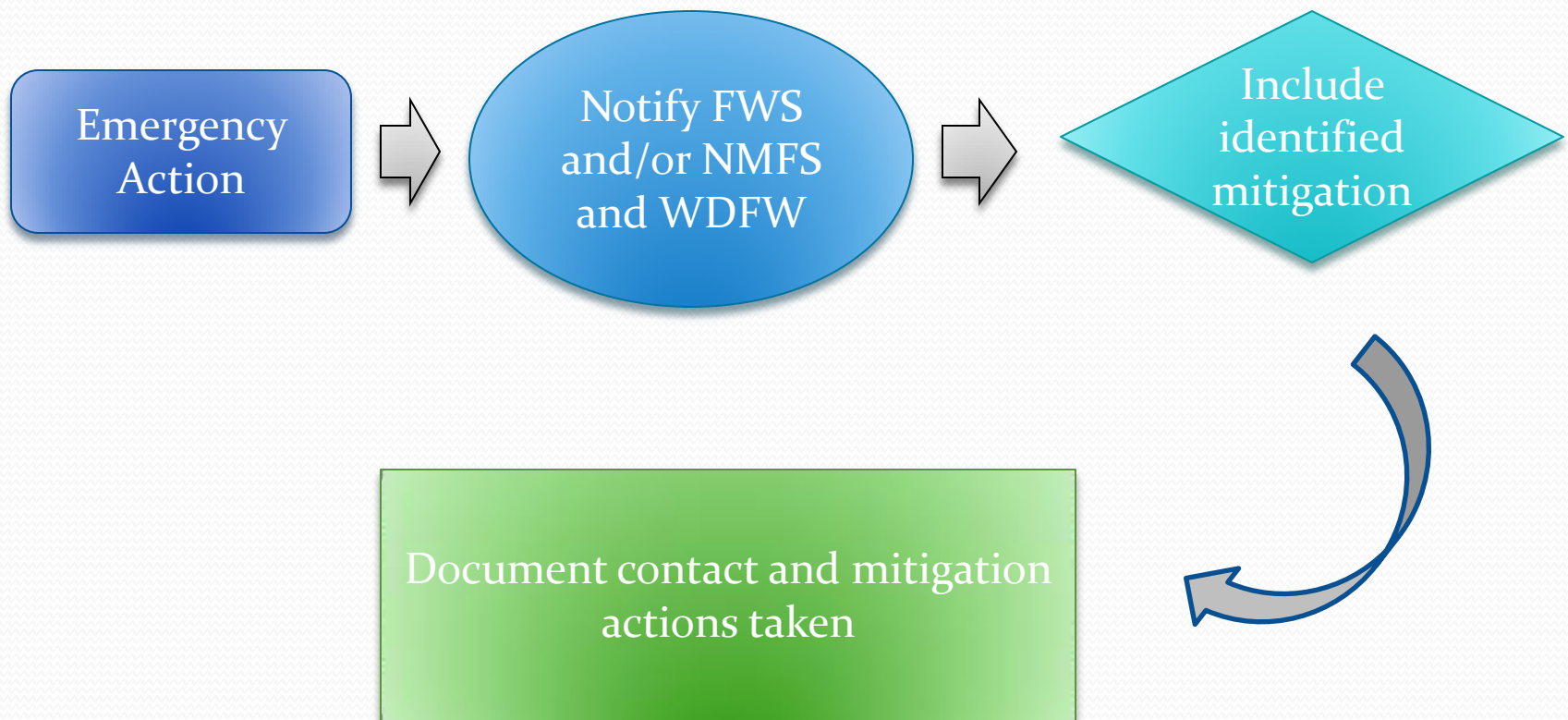
Any federal agency that funds, authorizes, or carries out an action must ensure that the action will not:

  - Jeopardize the continued existence of any endangered or threatened species
  - Result in the destructive or adverse modification of habitat of such species

# Consultation Under the ESA

- Consultation can be formal or informal
- Consultation determines:
  - Species or habitat effected
  - What mitigation is required
- Emergency Actions
  - Taken to protect life and property
  - FEMA must notify FWS and/or NMFS
    - Species or habitat effected
    - What mitigation is required

# Emergency Actions



# Informal Consultation Process

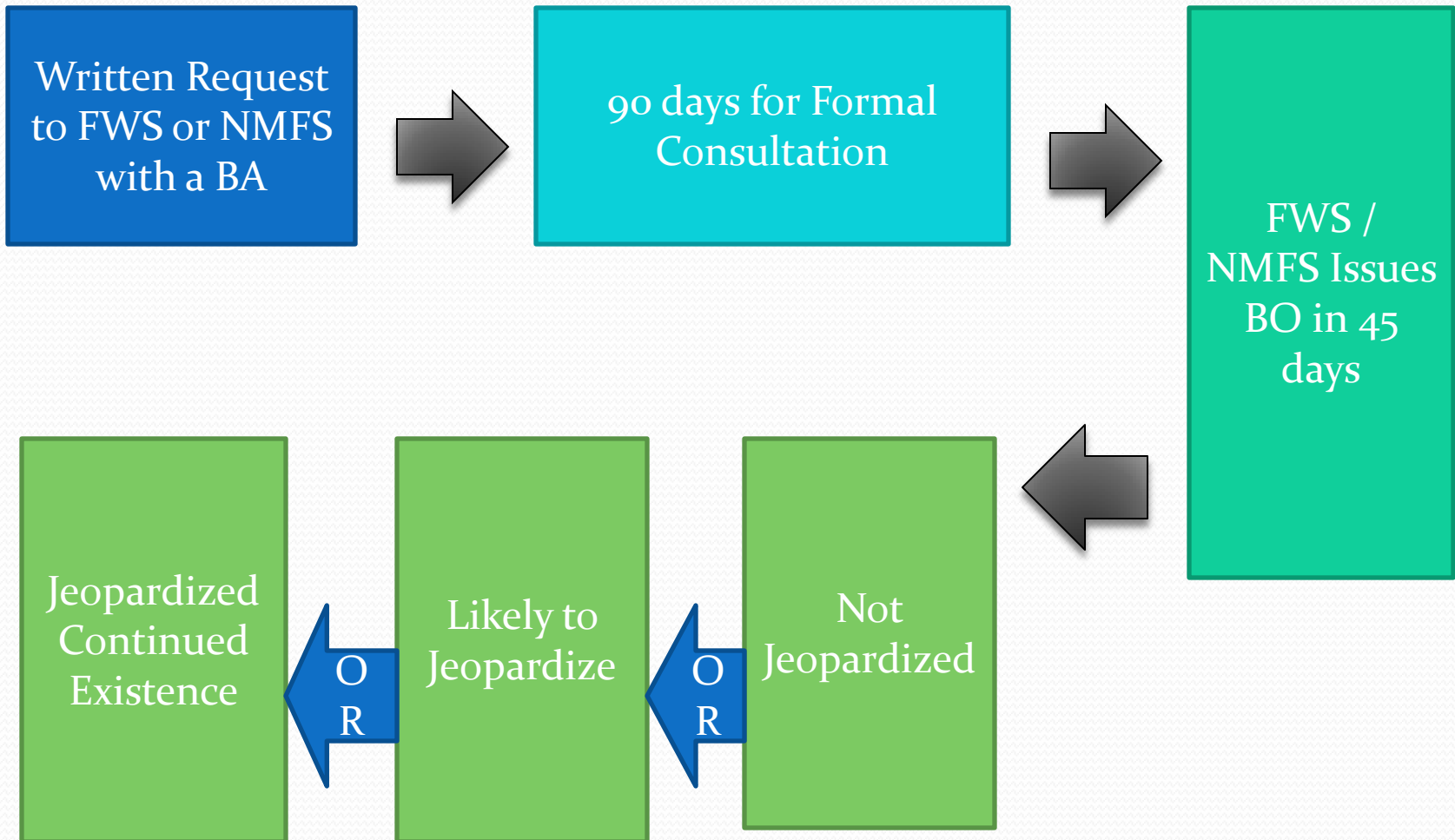
- Includes all discussions with FWS or NMFS; telephone, email, meetings, correspondence, etc.
- Federal agency asks FWS/NMFS whether protected species or critical habitat “may be present” within project area.
- FWS/NMFS must respond within 30 days
  - Species list
  - Recommendations for surveys
  - Modifications to projects

# Outcomes of Informal Consultation

- Will have no effect
- May effect but not adversely
- Likely to adversely affect – requires a Biological Assessment



# Formal Consultation



# Disaster-Specific Procedures

- Agreement Types:
  - Programmatic BA
  - Programmatic formal consultation
  - Programmatic BO
  - Memorandum of Understanding

# Programmatic Biological Assessment (PBA)

- Streamlines consultation under the Endangered Species Act and the Magnuson-Stevens Act
- Identifies 14 activities that may result in “may affect, not likely to adversely affect”
- Each activity includes:
  - a project description
  - Relative conservation measures
- Applicant must identify:
  - All individual activities associated with entire project

# Bald and Golden Eagle Protection Act



# Bald and Golden Eagle Protection Act

- In 2007, Bald eagles were removed from federal-listing of threatened and endangered species
- Still protected under :
  - Bald and Golden Eagle Protection Act
  - Migratory Bird Treaty Act
- Prohibits anyone from :
  - Taking, disturbing or harassing bald eagles
  - Protects nest trees
- WA State Law and Regulations also protect nesting and roosting habitat



# Regional Road Maintenance Program



# Regional Road Maintenance Program

- Regional Program approved by NMFS under Section 4(d) of the ESA
- Program adopted by 21 cities, 8 counties, and 1 state agency
- Guidelines identify Best Management Practices to reduce impact of road maintenance activities on Endangered Species and their habitats
- Consultation with USFWS is still necessary for those species not under NMFS area of responsibility. Generally, USFWS manages land and freshwater species, while NMFS manages marine and anadromous species. NMFS has jurisdiction over 68 listed species.

# Fish Passage Design Resources





# Fish Passage Design Resources

- NMFS Anadromous Salmonid Passage Facility Design
- WDFW
  - Aquatic Habitat Guidelines Program
  - Design of Road Culverts for Fish Passage
  - Stream Habitat Restoration Guidelines
  - Integrated Streambank Protection Guidelines
  - Land Use Planners Guide To Salmonid Protection And Recovery

# Agency Specific Plans



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- Quinault Indian Nation Forest Management Plan
  - Provides direction and technical specification for forest management activities on all tribally-owned land in Nation
  - Addresses repairs to roads, ditches, culverts, and bridges associated with FMP
  - Includes process for USFWS review and approval
- WDNR Habitat Conservation Plan
  - Allows timber harvestings and other management activities while addressing species conservation measures



U.S. EPA

# Clean Water Act

- Passed by Congress in 1972
- Goals:
  - Meet pollution control standards
  - States set water quality criteria
  - States receive money to reduce water pollution
  - Wetlands and aquatic habitat protected
- Applies to:
  - Rivers and streams
  - Lakes and ponds
  - Coastlines and Estuaries
  - Wetlands

# Clean Water Act and Permits

- Establishes permits to regulate discharge of dredged or fill materials
- Applicants must comply with State and Federal requirements
- Applicant must get permit for work within waters of the U.S.
- Joint Aquatic Resources Permit Application (JARPA)
  - One application for several permits
  - Applies to projects that may involve work within 200 feet of a water body, including wetlands
  - Assistance with JARPA available through Office of Regulatory Assistance

# U.S. Army Corps of Engineers

- Section 10, The Rivers and Harbors Act
- Section 404, CWA
- Permits
  - Nationwide Permits are issued under Section 404(e) of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899
  - Section 404

# Types of 404 Permits

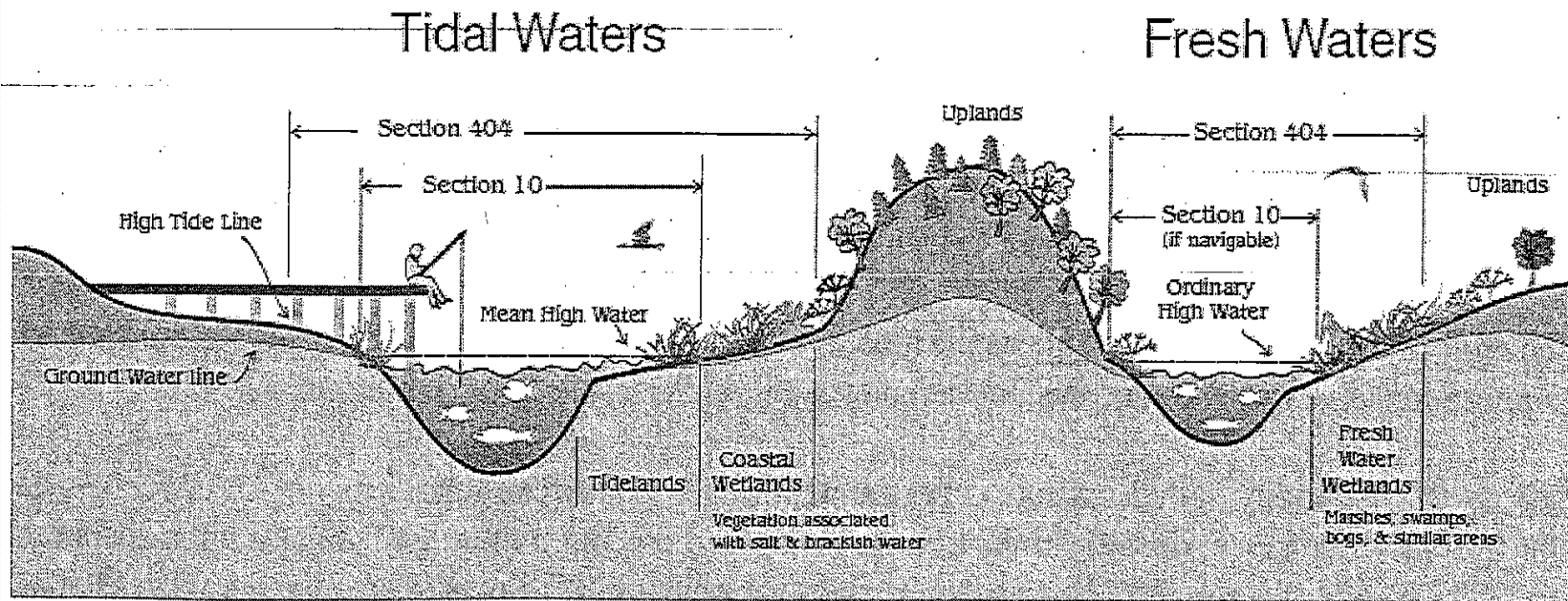
- Individual permits – required for potentially significant impacts greater than 1/3 acre
  - Issued to a single entity
  - Required when project does not meet conditions of general permit due to:
    - Type of activity
    - Size of project
    - Scale of impact to environment



# General Permits

- General permits – issued on a nationwide, regional or state basis for particular categories of activities
  - Require less review
  - Require varying levels of review
- 49 different activities covered under Nationwide Permits, general permit conditions pre-identified
- Most Relevant NWPs

# CORPS OF ENGINEERS REGULATORY JURISDICTION



## Section 103 Ocean Discharge of Dredged Material

Typical examples  
of regulated activities

Ocean discharges of  
dredged material

## Section 404 Disposal of Dredged or Fill Material (all waters of the U.S.)

All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

## Section 10 All Structures and Work (navigable waters)

Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.

# EO 11988 Floodplain Management

- Maintain natural and beneficial floodplain values
- Avoid development or new construction
- Evaluate potential effects
- Avoid actions within or affecting floodplain
- Exempt actions

# EO 11990, Protection of Wetlands

- Avoid adverse impact to wetlands
- Avoid supporting actions affecting wetlands

EPA defines Wetlands as:

“In the simplest sense wetlands are just places where land and water mingle in novel and intricate ways to create a remarkable diverse assortment of habitat types. Water is the dominant influence in soil structure and the kinds of plants and animals characterizing a wetlands.”

# Key Identifiers of Wetlands

- Vegetation
- Soils
- Hydrology

# Compliance Process for Floodplains and Wetlands EOs

- Similar EOs – grouped together
- Use 8-Step Process to evaluate the potential effects of proposed actions
- Parallels NEPA process

# Eight Step Planning Process for Floodplain/Wetland Management

8 Comply with Executive Orders

7 Provide Public Explanation

6 Determine Practicality

5 Minimize impacts

4 Assess impacts

3 Evaluate Alternatives

2 Encourage Public Involvement

1 Project Location in Floodplain/Wetland

# Municipal Stormwater Permits

The Clean Water Act prohibits anybody from discharging “pollutants” through a “point source” into a “water of the United States” unless they have an National Pollutant Discharge Elimination System (NPDES) permit.

Regulated entities must:

- Obtain coverage under an NPDES storm water permit (Municipal Stormwater Permit from WA DOE)
- Implement stormwater pollution prevention plans or storm water management programs that effectively reduce or prevent the discharge of pollutants into receiving waters